

In the Matter of Merchant Mariner's Document No. Z-336 279
Issued to: JAMES LEONARD PITTS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

694

JAMES LEONARD PITTS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 22 May, 1953, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended Merchant Mariner's Document No. Z-336 279 issued to James Leonard Pitts upon finding him guilty of misconduct based upon three specifications alleging in substance that while serving as Steward Utility on board the American SS ASBURY VICTORY under authority of the document above described, on or about 12 April, 1953, while said vessel was in the port of Masen, Korea, he wrongfully

- (1) used profane and abusive language towards the Second Officer;
- (2) assaulted the Chief Officer by brandishing a knife in a threatening manner, and offering to inflict bodily harm; and
- (3) threatened to place poison in the food of the Chief Officer during the homeward voyage.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and second and third specification proffered against him; the Examiner entered a plea of "not guilty" to the first specification.

Thereupon, the Investigating Officer and Appellant made opening statements and the Investigating Officer introduced in evidence the testimony of the Second Officer, the Radio Officer and Chief Officer of the SS ASBURY VICTORY. The knife which was held by Appellant was also identified and offered in evidence.

In defense, Appellant offered in evidence the testimony of a Junior Engineer on the vessel. From the Record it appears this witness was not in condition to testify; so the Examiner offered to have him recalled when sober, but this offer was refused by Appellant.

At the conclusion of the hearing, having given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the three specifications and entered the order suspending Appellant's Merchant Mariner's Document No. Z-336 279 and all other licenses, certificates of service and documents held by this Appellant for a period of six months from 21 May, 1953.

From that order, this appeal has been taken, and it is urged:

1. Appellant was justified in using profane language because the Second Officer first cursed him;
2. The knife was not removed from Appellant's pocket until the Chief Officer told Appellant to surrender it - which he did;
3. Appellant merely told the Chief Officer he would "get even"; he did not mention the use of poison;
4. Other witnesses would have testified for Appellant, but they were not aboard the vessel at the time.

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On 12 April, 1953, Appellant was serving as Steward Utility on board the American SS ASBURY VICTORY and acting under authority of his Merchant Mariner's Document No. Z-336 279 while said vessel was in the port of Masen, Korea.

At about 2250 on that date, the Second Officer, standing watch, observed Appellant, in at least a partially intoxicated condition, come on deck from shore; and Appellant held in his hand a knife with the blade exposed. The Second Officer admonished him to close the blade and put away the knife, which disposed Appellant to question the officer's order, and in the ensuing verbal

exchanges, Appellant addressed profane and abusive language to that officer.

Later, when Appellant appeared in the officer's saloon to continue the argument with the Second Mate, his conduct became so objectionable it was deemed appropriate to confine him temporarily by the use of handcuffs. As the Chief Officer was applying the handcuffs, Appellant again produced the knife with its blade exposed, which caused the officers present to retreat a short distance in apprehension of physical injury. At the instance of the Radio Officer, Appellant did surrender the knife without causing injury; but in the course of so-doing he stated that the officers would have to eat food prepared by him and implied a threat of poison to the Chief Mate.

I take official notice of Appellant's earlier record as a merchant seaman. He was guilty of insubordination in 1943 while serving on SS MORRISON R. WAITE; and of assault with a dangerous weapon in 1944 while serving on SS GEORGE W. McCRARY.

OPINION

I have little to add to the Opinion of the Examiner, and will discuss here only the questions raised on this appeal.

Points 1 and 2 above have no support anywhere in the Record. Appellant's witness obviously did not hear any of the conversation between Appellant and the Second Officer until the discussion had reached an advanced stage.

Points 2 and 3 are directly refuted by the testimony of persons who were present and witnessed Appellant's action as well as having heard Appellant's threat to the Chief Officer.

The fourth point might give me some concern but for the fact that the Record shows Appellant was fully informed by the Examiner respecting the taking of testimony from absent witnesses.

I find no merit in any proposition raised by this appeal; and, in view of Appellant's earlier record as a merchant seaman, consider the Examiner's order most moderate.

ORDER

The Examiner's Order dated at Baltimore, Maryland, on 22 May, 1953, is
AFFIRMED.

M. C. Richmond
Rear Admiral, United States Coast Guard

Acting Commandant

Dated at Washington, D. C., this 5th day of August, 1953.